

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Cable One, Inc.	)	CSR 6362-E
	)	
Petitions for Determination of Effective	)	
Competition in Odessa, Texas (CUID TX 0045;	)	
CUID TX 1253)	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 9, 2005**

**Released: March 30, 2005**

By the Deputy Chief, Media Bureau:

**I. INTRODUCTION**

1. Cable One, Inc. has filed with the Commission a petition pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in Odessa, Texas. Cable One alleges that its cable system serving Odessa is subject to effective competition pursuant to Sections 623(a)(2) and 623(1)(1)(4) of the Communications Act<sup>1</sup> and the Commission's implementing rules,<sup>2</sup> and therefore is exempt from cable rate regulation. Cable One claims the presence of effective competition stems from the competing cable services provided in Odessa by Grande Communications ClearSource, Inc. ("GCC"). Cable One further asserts that GCC is a local exchange carrier ("LEC") that also provides local exchange and local exchange access services in Odessa. Finally, Cable One asks for a revocation of the Commission's certification of the City of Odessa to regulate basic cable services. No opposition to the petition was filed.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>4</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>5</sup> Section 623(1)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition,

<sup>1</sup> 47 U.S.C. § 543(a)(4) & 543(1)(1)(4).

<sup>2</sup> 47 C.F.R. § 76.905(b)(4).

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> 47 C.F.R. § 76.905.

<sup>5</sup> See 47 C.F.R. §§ 76.906 & 907.

and therefore exempt from cable rate regulation, if a LEC or its affiliate offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.<sup>6</sup>

3. The Commission has stated that an incumbent cable operator could satisfy the LEC effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator's service in the franchise area.<sup>7</sup> The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so, that no regulatory, technical or other impediments to household service exist, that the LEC is marketing its services so that potential customers are aware that the LEC's services may be purchased, that the LEC has actually begun to provide services, the extent of such services, the ease with which service may be expanded and the expected date for completion of construction in the franchise area.<sup>8</sup>

### III. DISCUSSION

4. Cable One operates a cable television system in Odessa, Texas, for which it seeks a determination of effective competition. With its cable system passing nearly all households in Odessa, Cable One qualifies as the incumbent cable operator within Odessa for purposes of the "LEC" effective competition test at issue in this proceeding.<sup>9</sup> Cable One provided information showing that the State of Texas has granted certification for the provision of telephone exchange and local exchange access services by GCC in Odessa.<sup>10</sup> Therefore, GCC qualifies as a LEC for purposes of the LEC effective competition test.<sup>11</sup>

5. Also, GCC received a local cable franchise from the City of Odessa on February 8, 2000 authorizing it to provide cable programming services throughout Odessa.<sup>12</sup> Cable One demonstrated that GCC's franchise area encompasses Odessa, that GCC is required to extend its system to serve all residents of Odessa by November 1, 2007, that GCC's cable system currently passes approximately 47 percent of Odessa households and provides cable services to more than 4,500 Odessa subscribers.<sup>13</sup> In addition to holding franchises for, and the provision of, cable service within Odessa, GCC has distributed press releases, local advertising, and marketing materials within Odessa, which supports a finding that potential cable subscribers in that community are broadly aware of the availability of its cable services

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<sup>6</sup> 47 U.S.C. § 543(1)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). This statutory effective competition test may be referred to as the "LEC" effective competition test.

<sup>7</sup> *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) ("*Cable Reform Order*").

<sup>8</sup> *Id.*

<sup>9</sup> Petition at 4 .

<sup>10</sup> *Id.* at 3 & Exhibit D.

<sup>11</sup> *See* 47 U.S.C. § 543(1)(1)(D); 47 U.S.C § 153(a)(1).

<sup>12</sup> Petition at 4 & Exhibit F.

<sup>13</sup> *Id.* at 4-6 & Exhibits G, H & I.

and need only to contact GCC to obtain service.<sup>14</sup>

6. GCC's marketing materials show that its cable system offer over 50 channels of video programming that includes non-broadcast programming services such as ESPN, CNN, and HBO, as well as a complement of several local television broadcast stations.<sup>15</sup> Based on this record, we find that GCC's complement of programming services compares with the programming available on Cable One's system<sup>16</sup> and is sufficient to satisfy this aspect of the LEC effective competition test.<sup>17</sup> Cable One also provided evidence that there are no regulatory, technical or other impediments to GCCs' provision of service within Odessa.<sup>18</sup> Based on the foregoing, we conclude that Cable One has submitted sufficient evidence to demonstrate that its cable system serving Odessa is subject to effective competition.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to authority delegated by Section 0.283 of the Commission's rules,<sup>19</sup> that the petition of Cable One, Inc. for a determination of effective competition in Odessa, Texas, **IS HEREBY GRANTED**.

8. **IT IS FURTHER ORDERED** that the Commission's certification of the City of Odessa, Texas, to regulate basic cable services **IS HEREBY REVOKED**.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

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<sup>14</sup> *Id.* at 7 & Exhibit J.

<sup>15</sup> *Id.* at 8 & Exhibit N.

<sup>16</sup> *Id.* & Exhibit O.

<sup>17</sup> *See* 47 C.F.R. § 76.905(g).

<sup>18</sup> Petition at 6 & Exhibits D & F.

<sup>19</sup> 47 C.F.R. § 0.238.